

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:14-CV-00145-FL

TOYA WILSON and HARRY SMITH

Plaintiffs

v.

LNV CORPORATION; MGC
MORTGAGE, INC.; DOVENMUEHLE
MORTGAGE, INC.; and HUTCHENS
LAW FIRM,

Defendants.

ORDER

This matter is before the court on its own initiative to address several procedural deficiencies now impeding efficient administration of justice in this case. In this matter commenced by motion for leave to proceed *in forma pauperis*, United States Magistrate Judge Robert B. Jones, Jr., allowed plaintiff Wilson to proceed *in forma pauperis* by order entered September 4, 2014. The court noted, however, that the proposed complaint designated two plaintiffs, plaintiff Wilson and plaintiff Smith. Where each plaintiff must either pay a filing fee or move to proceed *in forma pauperis*, and where plaintiff Smith had done neither, the court directed plaintiff Smith to correct this deficiency by no later than September 18, 2014. The court noted that failure to comply may result in plaintiff Smith's removal as a plaintiff from this action.

Plaintiffs filed an amended complaint on November 5, 2014. Plaintiff Smith, however, still has not paid the filing fee or moved to proceed *in forma pauperis*, despite directive from the court to do so. Accordingly, plaintiff Smith is DISMISSED from this action for failure to prosecute.

Plaintiff Wilson filed an amended complaint in this action on November 5, 2014, naming as defendants the original defendants LNV Corporation (“LNV”) and MGC Mortgage, Inc., (“MGC”), as well as two additional defendants, Dovenmuehle Mortgage, Inc., (“Dovenmuehle”), and Hutchens Law Firm (“Hutchens”). Two days later, the original two defendants in this matter, LNV and MGC, filed a motion to dismiss the original complaint for failure to state a claim. In light of the filing of the amended complaint, the motion to dismiss the original complaint must be and is DENIED AS MOOT. In the event arguments raised in the motion to dismiss may apply equally to the amended complaint, defendants may file again a motion to dismiss in response to the amended complaint.

In filing amended complaint, plaintiff Wilson did not provide the court with proposed summonses for issuance as to the two defendants added with the filing of the amended complaint. On November 6, 2014, the clerk provided plaintiffs with blank summonses for return to the court. Upon submission of completed summons to the court, the court will direct the United States Marshal to serve summonses and a copy of the amended complaint on Dovenmuehle and Hutchens. At this time, however, where summons has yet to be provided for Dovenmuehle and Hutchens, and those defendants thus have not yet been served with amended complaint, the court EXTENDS the time for response to the amended complaint by all defendants until twenty-one (21) days after filing of process receipt and return of summons and complaint served on Dovenmuehle and Hutchens.

SO ORDERED, this the 17th day of November, 2014.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is fluid and cursive, with the first name "Louise" being more prominent.

LOUISE W. FLANAGAN
United States District Judge